



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO BRABHAM PETROLEUM CO.

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and 8(d), between the State Water Control Board and Brabham Petroleum Co., for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "BPC" means Brabham Petroleum Co., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means the BPC located at exit 128 of I-81 and also formally known as "The Lancer Truck Stop" and currently known as "Stop In Food Store #144" in Montgomery County, Virginia.
6. "O&M" means operations and maintenance.
7. "Order" means this document, also known as a Consent Special Order.

8. "Va. Code" means the Code of Virginia (1950), as amended.
9. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

**SECTION C: Findings of Fact and Conclusions of Law**

1. BPC owns and formally operated a truck stop Facility for retail sale of gasoline and diesel fuel located at exit 128 of I-81 in Virginia. Stop In Food Store #144 currently operates the Facility owned by BPC.
2. The Facility has a history of truck fuel and pump spills occurring on the property. Beginning from year 2000 through 2003 DEQ records show 5 incident reports at the Truck Stop. The spills have resulted in contaminated storm water discharges to VDOT storm drains and off-site adjacent lands (former Martin property and Drainage easements/VDOT Right of Ways). There is also the potential for contaminated storm water to reach the Roanoke River.
3. When Brabham Petroleum Company operated the Facility it exercised control over the Truck Stop and was responsible for any actual or potential discharge of wastes to State waters. The Facility operation under Brabham, as well as currently under Stop In Food Store, had the capability to alter the physical, chemical, or biological properties of State waters in contravention of § 62.1-44.5.
4. The Facility does not have a permit to discharge sewage, industrial wastes, other wastes, or any noxious or deleterious substances, including storm waters contaminated with oil into State waters.
5. DEQ conducted an investigation on March 12, 2003, regarding an incident (IR#: 2003-W-0184) that occurred on March 11, 2003, and found that a tractor-trailer had leaked diesel fuel on the Facility. Also found were several areas of saturated soil on the premises and fuel contamination in a storm drain on adjacent off-site property across route 603. On April 23, 2003, the site was revisited and it was observed that saturated soil remained with more spills having occurred since the previous visit.
6. DEQ sent a warning letter dated April 25, 2003. A response letter from Mr. Henry Brabham, dated May 14, 2003, was received in the WCRO May 15, 2003, stating they had already scheduled clean-up work to be performed at the site but were being delayed because of rain. The letter states "We hope to have all contaminated soil removed and proper coverage back in place by the end of this month." The compliance inspector in June 2003 sent an internal memo requesting a NOV be sent for failure to clean up the contaminated areas. A follow-up inspection took place on September 17, 2003. No progress in cleaning up contaminated areas was observed.

7. A NOV was sent November 4, 2003. As a result of the NOV, an enforcement meeting was held on November 18, 2003. DEQ requested Brabham prepare a plan of action to address the clean up of the contaminated areas and to provide plans for addressing future collection of contaminated storm waters. Mr. Hank Brabham submitted a letter dated November 21, 2003, containing a 5-point plan for addressing the issues and requested DEQ to enter into a LOA. All work in the Brabham plan was to be completed by December 31, 2003.
8. DEQ compliance and enforcement staff visited the truck stop on February 18, 2004. Numerous oil contamination areas were observed on the truck stop property, the storm drain inlets had obvious signs of receiving oil-contaminated waters, and it was noted that off-site adjacent property had oil contamination from the site run off. None of the 5 point items were being adhered to or in place.
9. On November 1, 2004, DEQ received a Gay and Keesee revised Plan Drawing (printed on October 12, 2004) and the associated Manual (calculations, cutsheets, & treatment unit manual) dated October 29, 2004. Together these plans and associated manual make up the technical design and specifications of a system that will provide separation of oil from contaminated storm waters.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders BPC, and BPC agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders BPC, and BPC voluntarily agrees, to pay a civil charge of \$5,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The payment check must include the Federal Identification Number and a notation that it is for payment of a civil charge pursuant to this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of BPC, for good cause shown by BPC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to BPC by DEQ on November 4, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, BPC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BPC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BPC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by BPC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BPC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. BPC shall show that such circumstances were beyond its control and not due to a lack of good

faith or diligence on its part. BPC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BPC. Notwithstanding the foregoing, BPC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to BPC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BPC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, BPC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12<sup>th</sup> day of SEPTEMBER, 2006.

Steven A. Dietrich  
Steven A. Dietrich, Regional Director  
West Central Regional Office  
Department of Environmental Quality

BPC voluntarily agrees to the issuance of this Order.

By: [Signature]  
Date: 06/16/06

Commonwealth of Virginia

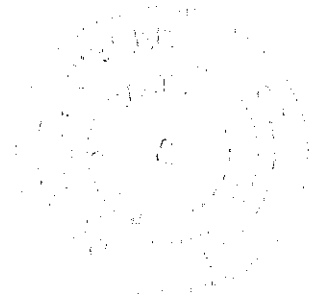
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 16<sup>th</sup> day of June, 2006, by Henry Brabham, who is  
(name)

President of BPC, on behalf of the Company.  
(title)

Cathy Q. Kibler  
Notary Public

My commission expires: 8/31/09



## APPENDIX A

BPC shall:

1. By **September 5, 2006** complete the installation of the contaminated storm water BMP collection and treatment system for the Facility as specified in accordance with the Gay and Keesee revised Plan Drawing printed on October 12, 2004 and the associated Manual (Calculations, cutsheets, & Treatment unit manual) dated October 29, 2004. The Plan and Manual are incorporated into this document and are fully enforceable as a part of this Consent Order.
2. By **September 15, 2006** begin the collection and treatment of contaminated storm water from the Facility.
3. Operate and maintain the BMP system at peak efficiency and maintain its operational integrity at all times. BPC shall also take all necessary measures to utilize the system to its fullest to keep petroleum contaminated storm waters from reaching Virginia Department of Transportation drainage structures.
4. By **July 5, 2006** remove and properly dispose of all on-site Facility contaminated soils.
5. By **July 5, 2006** remove and properly dispose of any off-site contaminated soil on adjacent properties that has resulted from contaminated run-off from the Facility and remediate that property to restore it to conditions previous to being contaminated
6. All contaminated soils removed for disposal in Virginia shall only be disposed of in permitted facilities with special waste approval for soil contaminated by petroleum.